IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 548 of 2000

Date of decision: 28.9.2007

State of Himachal Pradesh **..Appellant**

Versus

Ram Kali **..Respondent**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For the Respondent: None

Deepak Gupta, J.

This appeal is directed against the judgment of the Judicial Magistrate Ist Class (II) Shimla in case No. 95/2 of 1996 whereby he has acquitted the accused of having committed offence punishable under Sections 323/325 and 506 IPC.

The prosecution case in brief is that complainant, Kamla Devi, was washing utensils in her courtyard and her daughter-in-law, Poonam, was washing

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

clothes nearby. In the meantime, a small son of accused Ramkali came and started putting his hand in the water. Kamla asked the accused to take her son away. Thereafter a quarrel took place and Ram Kali is alleged to have beaten Kamla with a danda. When Poonam tried to rescue her mother-in-law she was also beaten with the danda. On hearing the noise, Sadhu Ram, husband of Kamla, came out from his house and rescued his wife and daughter-in-law. The matter was reported to the police and FIR Ex.PW-5/B was lodged. After investigation challan was submitted in court. The accused were summoned. They leaded not guilty and claimed trial.

PW-1, Poonam has supported the prosecution case. According to her when her mother-in-law asked the accused to take away her son, she beat her mother-in-law with a danda. When Poonam tried to save her mother-in-law the accused gave her beating also. In examination-in-chief she stated that she handed over the danda Ex.P-1 to the police whereas in cross examination she states that in fact danda was handed over to police by her father-in-law. She further states that the fight continued from 11.10 a.m. till 12 noon. She admits that there are numerous

cases pending between the accused and the complainant party.

PW-2 Sadhu Ram states that when he heard the noise, he came out and rescued Kamla and Poonam. He also states that the incident was witnessed by Ram Krishan. He admitted that in his presence no beating was given to his wife, but according to him 2-3 danda blows were given to his daughter-in-law.

PW-3, Uma Devi denied that any incident had taken place in her presence. Similarly PW-4 also denied that anything happened in his presence. Both these witnesses were declared hostile, but nothing material was extricated in their cross examination by the prosecution.

PW-8, Kamla has also supported the prosecution version. According to her also, the scuffle continued from 11.10 a.m. to 12 noon. She admits that there are 5 other houses close to the house of the complainant and the accused.

PW-9 is Dr. Ashok Thakur, who had issued the MLCs. From the evidence and material on record it is apparent that the two independent witnesses have not at all supported the prosecution case. No doubt, conviction can be recorded even on the basis of the statement of the

injured party, but in the present case it is apparent from record that a number of cases are pending between both the sides. There is a lot of litigation and bad blood between them. The quarrel is said to have gone on for almost 50 minutes. If that was true, why did Sadhu Ram not come out of the house immediately. It cannot be believed that for 50 minutes he kept hearing the quarrel and his wife and daughter-in-law were being beaten up while he remained in the house. No witnesses from the adjoining houses have been associated with the investigation. Other than the statements of the family members, there are no statements of any independent witnesses to support their case. The complainant party in court has stated that accused was armed with a darat, but in the complaint and the FIR there is no mention of darat.

In view of the aforesaid facts I feel that the learned trial court has rightly given the benefit of doubt to the accused. No interference is called for. The appeal is dismissed.

September 28, 2007(K) (Deepak Gutpa), J.